

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED SEATING AND MOBILITY, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:08CV00435 ERW
)	
WADE E. BROWN,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff United Seating and Mobility, LLC's Motion to Dismiss Defendant Wade E. Brown Without Prejudice [doc. #28]. This Court held a hearing regarding Plaintiff's motion to dismiss without prejudice on September 5, 2008.

Rule 41 of the Federal Rules of Civil Procedure provides that a plaintiff may dismiss an action without obtaining a court order if the plaintiff files a motion to dismiss before the opposing party files its answer or a motion for summary judgment or if all parties stipulate to the dismissal. Alternatively, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In such a situation, the dismissal is without prejudice, unless the order states otherwise. *Id.*

Because the Defendant has already filed his answer in the present action, the Plaintiff has requested that this Court order a dismissal without prejudice. The Court has determined that, based on the circumstances, a dismissal without prejudice is warranted.

ACCORDINGLY,

IT IS HEREBY ORDERED that Plaintiff United Seating and Mobility, LLC's Motion to Dismiss Defendant Wade E. Brown Without Prejudice [doc. #28] is **GRANTED**.

So Ordered this 8th Day of September, 2008.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE